

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.W.P No.13635 of 1993

Date of Decision: 15.07.2009

Punjab State Tubewell Corporation Ltd, Chandigarh through the
Secretary

.....Petitioner

Versus

The Presiding Officer, Labour Court, Bhatinda and others

...Respondents

Present: Mr. Varinder Pal Singh, Advocate
for the petitioner.

Mr. Hitesh Pandit, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. The challenge to the award of the Labour Court at the instance of the management namely Punjab State Tubewell Corporation Ltd. is made on two counts: One, the purported reference that had been made was without notice and therefore, the reference to the Labour Court was vitiated. Two, the workman had been terminated from service on account of his being rendered surplus and being a junior most in the cadre that he belonged, he was required to be retrenched and notice of retrenchment was duly issued under Section 25-F of the Industrial Disputes Act and compensation was also paid to him which he had received. There had been a perfect statutory compliance and therefore, the award of the Labour Court finding the termination to be illegal was unjustified. The management, therefore, seeks for quashing of order.

2. Learned counsel appearing for the workman submits that he had been appointed on work-charged basis for projects undertaken at various divisions as a Mate on 01.02.1978 and later was promoted and posted as Work Mistry on 01.10.1979. He had continued his services in such a post till the management passed order dated 04.05.1988. He had been ordered to be reverted from his designated post as Work Mistry to lower rank Chowkidar (Mate). Within five days, on 10.05.1988, a notice of retrenchment had been served and on 06.06.1988, the retrenchment compensation had been given and received by the workman.

3. The challenge to retrenchment came immediately thereafter when a demand notice had been issued on 29.06.1998 and the proceedings were before the Labour Court on a reference from the Government.

4. On the objection that the reference itself was bad, the Labour Court had considered the fact that there was nothing on record to show conclusively that the management had not been heard before a reference was finally made to the Court. It reasoned that in the absence of best evidence in the form of record of the Labour Commissioner, Punjab, it should be taken that the management withheld from the Court vital evidences for the reasons best known to it and held the issue against the management. I am not persuaded to take any different view on the legality of the reference itself.

5. While considering the issue whether the retrenchment was valid or not, the Labour Court had considered the fact that even the order of reversion purported to have been made on 04.05.1988, had been made without any prior notice and even before the ink dried in the office

order, notice of termination was issued. The Labour Court had referred to the fact that the workman had stated on oath that notice of retrenchment was given on the same day when he was also informed that he had been reverted. In matter of public employment, it is inconceivable that even if there was a decision for reversion, it could be made without following the elementary principles of natural justice of serving notice on the workman to show cause against reversion. The reversion was just not a change in designation but it had serious consequences of lower scale of pay. Again reversion cannot be a matter of mere administrative exigency with no formulation about how it could be done without any reference to seniority. All that, we find from the order of reversion on 04.05.1988 was that he was senior in the lower category from which he was promoted. Actually, the juniormost amongst the higher post alone could have been reverted and the reference must have been made with reference to his rank being the junior most from the post from which he was being reverted. Again the order of reversion refers to two other persons Balu Ram and Gurdev Singh also as having been reverted on the same day.

6. The Labour Court has found that even amongst the persons, who had been retained in the service after the so-called reversion, there were persons who were lower in the order of seniority such as Piara Lal s/o Gurditta Ram (Sr. No.50) and several other persons who had been shown lower in the ranks as Chowkidars and they had been still in service. Learned counsel appearing for the Corporation would find fault with the reasoning adopted by the Labour Court by pointing out that the persons who had been retained in service had been inducted as Chowkidars and the workman was a Mate who belonged to a different

category. Even in the order of reversion, the reference to the designation of the workman is stated to be only Chowkidar and the expression Mate is stated in parenthesis. Even in the seniority list, which had been produced before the Labour Court, it is said to be only an extract of the seniority of Chowkidars and the extension which was sought to be given, was wrongly done. If only there was an official gradation that existed that a Mate could not be accommodated as a Chowkidar, there was no reason why a person who is senior amongst the workmen that were in the same Class IV category should be jettisoned and persons who were juniors to him should be retained in service. There was not even any evidence that there was any rational classification amongst the various categories of workmen amongst Class IV category. With no evidence coming from the management to explain with reference to the Service Rules making differentiation in the classes of workers amongst the same category, the Labour Court was justified in finding the reversion and the retrenchment to be illegal.

7. The Labour Court has considered what was relevant and has passed the order directing reinstatement of the workman as Chowkidar with continuity of service and back wages. I affirm the decision and dismiss the writ petition. No costs.

(K. KANNAN)
JUDGE

July 15, 2009
Pankaj*